

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GILBERT OSUNA LUNA, G30301,

Plaintiff,

V.

PALACIOS, Correctional Officer, et al.,

Defendant(s).

Case No. 22-cv-07280-CRB (PR)

## **ORDER OF DISMISSAL**

On February 26, 2024, defendants filed a notice/suggestion of death under Federal Rule of Civil Procedure 25(a) noting the death of plaintiff on or about February 9, 2024 at Salinas Valley State Prison (SVSP).

Rule 25 (a) provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.”

To start the 90-day period under Rule 25(a), (1) “a party must formally suggest the death of a party upon the record,” and (2) the “non-party successors or representatives of the deceased party must be served the suggestion of death in a manner provided by Rule 4 for the service of summons.” Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994). Here, the first requirement was met by the filing of the notice/suggestion of death of plaintiff on February 26, 2024. See ECF No. 20. And the second requirement was met by the publication of the notice/suggestion of death of plaintiff on May 22, 2024, May 29, 2024, June 5, 2024 and June 12, 2024. See ECF No. 27 Ex. 1.

Because no motion for substitution was made within 90 days of June 12, 2024, the instant action by the decent plaintiff is DISMISSED pursuant to Rule 25(a).

The clerk is directed to close the case and terminate all pending motions as moot.

## **IT IS SO ORDERED.**

Dated: September 16, 2024

  
CHARLES R. BREYER  
United States District Judge